IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1568 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SHAIJH ABDULKADI ABDUL JABBA - Appellant(s)
Versus
GUJARAT ELECTRICITY BOARD & 2 - Defendant(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1,
MR MD PANDYA for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 2,
MR RR MARSHALL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 31st January 1990 passed by the Civil Judge (SD), and Ex Officio Commissioner for Workmen's Compensation Act, Nadiad in Workmen's Compensation Case No.73 of 1986 whereby the said application has been allowed and the claimant has been awarded a total sum of Rs.1,00,730/-along with interest at the rate of 12%.

2. The case of the applicant is that the respondent no.2 is a contractor and he took contract work from the respondent no.1 for erection of thermal power

station. He, therefore, engaged the present appellant and he was doing work as welder. While working on 18.9.1985 he sustained serious injuries on the left hand and three fingers were cut off. In an operation those fingers were joined again, but all the three fingers have become stiff and therefore he is not able to carry out any work. Ultimately he was removed from the service from December 1986. Under the circumstances he filed application for compensation wherein the Commissioner has passed the aforesaid award.

3. The present appeal has been filed on the ground that the first and third respondents have not been held liable for the amount of compensation as well as the amount of penalty and interest.

4. Learned Advocate for the appellant submitted that the respondent no.2 was given the contract by respondent no.1 and erection of thermal power station is the business of the respondent no.1. He therefore submitted that the respondent no.1 can be termed as an employer of the appellant and therefore the said respondent ought to have been held liable for payment of compensation.

5. On perusal of the record it is found that the Commissioner has clearly recorded a finding that the appellant is not under the direct control of the respondent no.1 and therefore he cannot be a workman of the respondent no.1. There is nothing on record to

suggest that he was under the employment of respondent no.1. As regards the position of respondent no.3 is concerned, it is a settled law that the employer while entering into contract of insurance can act as per his will and can contract out of certain items of his liability such as liability to pay interest. In the case of New India Assurance Co. Ltd. V. Harshadbhai Amrutbhai Modhiya, reported in 2006 AIR SCW 2352 in paras 14, 15 and 21 it is held as under:

> 14. By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-a-vis the insurer.
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> 15. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in

law.

> 21. For the reasons aforementioned, the impugned judgement cannot be sustained. It is set aside accordingly. The appeal is allowed. The appellant is not liable for the interest. However, we make it clear that the employer shall be liable to pay the amount of interest to the claimant. In the facts and circumstances of the case, there shall be no order as to costs."

In view of the above decision no liability can be fastened upon the respondent no.3 Insurance Company.

6. In the premises aforesaid, I do not find any merits in the appeal. The appeal is, therefore, dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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